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Comptroller General  
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## Decision

**Matter of:** Meridian Management Corporation

**File:** B-285127

**Date:** July 19, 2000

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Michael A. Gordon, Esq., Holmes, Schwartz & Gordon, for the protester.  
Scarlett D. Grose, Esq., General Services Administration, for the agency.  
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Agency may not exclude a technically acceptable proposal from the competitive range without taking into account that proposal's price.
  2. Solicitation for operations and maintenance services at two federal buildings and two parking facilities did not put offerors on notice that they would be required to perform specialized operations and maintenance services in laboratories housed in those buildings, given that solicitation did not in any way refer to the specialized services and offerors were not given the opportunity to visually inspect the laboratories themselves to determine whether equipment requiring specialized service was present.
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### DECISION

Meridian Management Corporation protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. GS05P00GAC0126, issued by the General Services Administration (GSA) for operations and maintenance services at two buildings and two parking facilities in Chicago. The protester contends that the agency improperly failed to consider its proposed price before deciding to exclude its proposal from the competitive range. The protester also argues that the solicitation improperly failed to apprise offerors that they would be expected to perform specialized services in agency laboratories located in one of the buildings.

We sustain the protest.

The RFP requested proposals for a base period (of 12 months) and two option periods (of 12 and 36 months, respectively) to operate and maintain the mechanical, electrical, utility, and interior and exterior architectural/structural (A/S) systems in the four facilities. RFP §§ B, C. Offerors were to submit unit prices on a monthly basis for certain services (preventive maintenance, repairs, and service calls) and unit prices on an hourly basis for other work (such as overtime service and emergency calls). RFP § B. The solicitation provided for award to the offeror whose proposal represented the best value to the government in terms of total evaluated price, experience, and past performance. The solicitation noted that past performance and experience combined would be more important than price, but that as proposals became more equal in terms of past performance and experience, price would become more important. Similarly, experience was more important than past performance, but as experience became more equal, past performance would become more important. RFP § M. To permit evaluation of their experience and past performance, offerors were instructed to submit a minimum of three references for similar past or current contracts. Id.

[Deleted] proposals were received. The contract specialist contacted three references for each offeror and asked each a series of 31 questions, 16 focusing on the nature of the contract that the offeror had performed for it (e.g., type of services performed, length of contract, dollar amount) and 15 focusing on the offeror's performance under the contract. A point score of 0 to 5 was assigned for each response. Some questions were scored on an all-or-nothing basis (i.e., the only scores possible were 0 and 5); others (generally those related to past performance) were scored on a graduated basis (i.e., scores of 0, 1, 2, 3, 4, or 5 were possible). For example, each reference was asked whether the contractor had worked in special use areas such as laboratories (with a response of "yes" receiving a score of 5, and a response of "no," a score of 0); the references were then asked to rate the contractor's performance in this area (with a rating of "excellent" receiving 5 points; a rating of "very good," 4 points; a rating of "good," 3 points; a rating of "fair," 2 points, a rating of "poor," 1 point, and a rating of "not applicable," 0 points). The contract specialist calculated an experience/past performance (E/PP) score for each contract by adding together the point scores for each of the 31 questions and dividing by 31. The agency then averaged the three E/PP scores for each offeror to come up with an overall E/PP rating for each firm and ranked the proposals in order of their E/PP ratings.

The contracting officer determined that there were too many highly rated proposals for an efficient competition to be conducted and that the size of the competitive range should be limited.<sup>1</sup> Contracting Officer's Statement, May 11, 2000, at 1. The

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<sup>1</sup> Under Federal Acquisition Regulation (FAR) § 15.306(c)(2), a contracting officer may limit the number of offers in the competitive range (which otherwise is comprised of all the most highly rated proposals) to the greatest number that will  
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contracting officer decided to include in the competitive range only those proposals with E/PP ratings of [deleted] or higher (“because there was more than adequate competition above that range”) and prices of less than [deleted] (because prices above [deleted] were considered too high for the offerors to have a reasonable chance of award). Id.; Competitive Range Determination at 1. Meridian’s proposal, which was lower in price than [deleted] of the competitive range proposals, was not included in the competitive range because it received an E/PP score of [deleted].

In commenting on the agency report, the protester argued that the agency had unfairly penalized it by assigning it a past performance score of 0 (for “not applicable”) in an area in which it lacked experience (i.e., special use areas such as laboratories). We asked the agency to respond to this argument, and in its reply, the agency acknowledged that it had erred in assigning offerors without experience in laboratories scores of 0 for their performance in this area.<sup>2</sup> Contracting Officer’s Statement, June 1, 2000, at 2. The contracting officer recalculated offerors’ E/PP scores by dividing the point totals on questionnaires regarding contracts which did not involve work in laboratories by 30 rather than 31. The scores, as revised, for the 10 top-ranked proposals were as follows:

<u>Contractor</u>	<u>E/PP Rating</u>	<u>% of total points</u>	<u>Price</u>
Offeror A	[deleted]	[deleted]	[deleted]
Offeror B			
Offeror C			
Offeror D			
Offeror E			
Offeror F			
Offeror G			
Offeror H			
Offeror I			
Meridian			

Contracting Officer’s Statement, June 1, 2000, at 3; Competitive Range Determination at 1.

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permit an efficient competition provided that (as here) the solicitation notifies offerors that this may be done. RFP § L (incorporating FAR § 52.215-1(f)(4)).

<sup>2</sup> In this regard, the inclusion of a score of 0 for past performance for an area in which the offeror in fact has no experience serves to lower the offeror’s overall past performance score, in violation of the requirement that firms lacking relevant past performance history receive a neutral evaluation for past performance. FAR § 15.305(a)(2)(iv); NAHB Research Ctr., Inc., B-278876.2, May 4, 1998, 98-1 CPD ¶ 150 at 5.

Although Meridian's score improved from [deleted] to [deleted] as a result of the rescoring, the scores of all the other offerors improved as well, leading the contracting officer to raise the cutoff for inclusion in the competitive range to [deleted]. The competitive range thus consisted of proposals with E/PP scores of [deleted] or higher and prices of below [deleted] (*i.e.*, the proposals of offerors A, C, D, G, and H).

The protester argues that it was improper for the agency to exclude it from the competitive range without any consideration of its price. We agree.

Cost or price to the government must be included in every RFP as an evaluation factor, and agencies must consider cost or price to the government in evaluating competitive proposals. 41 U.S.C. § 253a(c)(1)(B) (1994); FAR §15.304(c)(1); Kathpal Techs., Inc.; Computer & Hi-Tech Management, Inc., B-283137.3 *et al.*, Dec. 30, 1999, 2000 CPD ¶ 6 at 9. This requirement means that an agency may not exclude a technically acceptable proposal from the competitive range without taking into account the relative cost of that proposal to the government. Columbia Research Corp., B-284157, Feb. 28, 2000, 2000 CPD ¶ \_\_\_\_; Kathpal Techs., Inc.; Computer & Hi-Tech Management, Inc., *supra*. Here, the agency did not consider the relative cost of Meridian's proposal in deciding to exclude it from the competitive range; Meridian's proposal was eliminated solely because its E/PP score [deleted] was below the cut-off score of [deleted]. The agency gave no consideration to the fact that Meridian's price [deleted] was considerably lower than that of one of the competitive range offerors whose technical score, while above the [deleted] cut-off, nevertheless was very close to Meridian's score (*i.e.*, offeror G, with a technical score of [deleted] and a price of [deleted]).

Meridian also argues that it should have received credit under the E/PP questionnaire item relating to its experience in "special use areas." In this regard, the questionnaire asked the offeror's references about the offeror's experience and performance in "special use areas such as labs," describing them as areas that "operate 24 hours/7 days. Special temperature and humidity levels must be maintained." E/PP Questionnaire, Question 14. Meridian argues that the agency should have given it credit for its performance of operations and maintenance services in areas such as [deleted] that require maintenance of temperature and humidity levels on a 24-hour basis. Protester's Comments, May 22, 2000, at 5. The protester maintains that it performed services in such areas under all three of its reference contracts.

The agency responds that it did not give offerors credit under this item for their experience in special use areas other than laboratories because non-laboratory areas such as [deleted] involve less complex equipment and require less complex services than laboratories. In this regard, the contracting officer explains that [deleted] have only temperature and humidity controls, whereas certain laboratories housed in the

building covered by the RFP (referred to as the Drug Enforcement Administration (DEA), Environmental Protection Agency (EPA), and Federal Bureau of Investigation (FBI) laboratories) have “temperature and humidity controls, floor pressurization and fume hood calibration and all the equipment that goes with it,” and the contractor “has to know and understand how all these things fit together.” Contracting Officer’s Response to GAO Questions, June 1, 2000, at 1. Further, the contracting officer explains, the contractor must “know how to read, understand, replace and repair” sash sensors and flow rings. Id. at 1-2.

The protester has not attempted to rebut the contracting officer’s argument that laboratories require more complex services than [deleted]; it does argue, however, that the RFP did not place offerors on notice that they would be required to perform specialized maintenance and repair work such as that described by the contracting officer, and that if the agency does indeed intend for the awardee under this solicitation to perform such services, the solicitation should be amended to make this clear. The protester further states that if it had been on notice of the specialized requirements, it would have revised its proposal to specifically address those requirements, including [deleted].

GSA responds that the RFP did place offerors on notice of the specialized maintenance and repair work required in the laboratories by stating that the agency needed service in the DEA, EPA, and FBI laboratories located in the buildings covered by the RFP. Contracting Officer’s Response to GAO Questions, June 20, 2000, at 1. The agency further notes that offerors were given an opportunity to tour the buildings and to raise any questions that they had regarding the specifications.

The protester counters this argument by pointing out that the section of the solicitation that addresses service in the laboratories, RFP § J, exh. 8, identifies no special equipment to be maintained, but instead focuses on the need for around-the-clock maintenance of temperature and humidity levels. The protester further notes that the building tour did not alert offerors to the fact that the laboratories contained specialized equipment that they would be expected to maintain because offerors were not allowed in the FBI and EPA laboratories, and because the DEA laboratory had “no visible indications of equipment that had to be maintained to retain temperature and humidity levels that was different from the normal equipment listed in RFP § J, Ex. 1 [Equipment and Systems to be Operated, Maintained and Repaired].” Protester’s Comments, June 22, 2000, at 2.

The issue originally raised by the protester--whether it should have received credit for experience in special use areas--in fact turns on whether the RFP adequately indicated that the contractor would be called on to provide specialized maintenance and repair work of the type now said by the agency to be required at the DEA, EPA, and FBI laboratories. If the solicitation, reasonably read, did not so indicate, the agency could not reasonably deny credit to the protester for lack of such experience without first amending the RFP to advise that such services would be required. As

discussed below, we conclude that the RFP did not place offerors on notice that they would be required to perform specialized maintenance and repair work.

A procuring agency must provide sufficient information in a solicitation to enable offerors to compete intelligently and on a relatively equal basis. J&J Maintenance, Inc., B-272166, July 29, 1996, 96-2 CPD ¶ 56 at 3. An agency can accomplish this by furnishing offerors with sufficiently detailed information in the solicitation or, to the extent the agency is unable to furnish the necessary level of detail, by giving offerors the opportunity to obtain such information on their own through site visits. See KCA Corp., B-236260, Nov. 27, 1989, 89-2 CPD ¶ 498 at 2. Here, GSA did neither. In our view, the RFP did not convey to offerors that they would be responsible for operating, maintaining, and repairing specialized equipment found only in the laboratories, such as fume hoods, sash sensors, and flow rings. In this regard, the RFP contained an exhibit entitled "Equipment Requiring Special Consideration," which provided in relevant part as follows:

C. Location 1 houses DEA, EPA, PHS and FBI Laboratories. These areas operate 24 hours a day, 7 days a week. Temperature and humidity levels must be maintained as required by tenant agencies. The contractor shall be responsible for maintaining these levels as required.

RFP § J, exh. 8. We think that a reasonable reading of this paragraph is that the only equipment requiring special consideration in the laboratories is the equipment used to maintain temperature and humidity levels and that the special consideration that it requires is that it must be operated so as to maintain those levels on an around-the-clock basis. There is nothing in the language to suggest that work involving items such as fume hoods, which bear no apparent relationship to temperature and humidity control, will be required. Further, since the agency did not allow offerors to visit two of the laboratories, it cannot reasonably argue that offerors had the opportunity to obtain additional information regarding the equipment to be maintained through their own visual inspection. Accordingly, we conclude that the RFP did not put offerors on notice that they would be required to perform specialized operations and maintenance services in the laboratories housed in the buildings.

We recommend that the agency amend the RFP to make clear that the work to be performed includes the maintenance and repair of specialized equipment found in the laboratories, and that it then request submission of revised offers. We further recommend that in making a new competitive range determination, it take both E/PP scores and price into account.<sup>3</sup> We also recommend that the agency reimburse the

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<sup>3</sup> In its protest, Meridian also argued that its E/PP scores were based on erroneous information provided by its references regarding the scope of services that it furnished on the contracts performed for them, specifically with regard to

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protester for its costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2000). In accordance with section 21.8 of our Regulations, Meridian's certified claims for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of the decision.

The protest is sustained.

Robert P. Murphy  
General Counsel

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maintaining [deleted]. Meridian asserted that its technical score would have improved significantly had it received the appropriate credit for maintaining all three systems under its reference contracts, and argued that the agency should have communicated with it regarding the scope of its experience prior to establishing the competitive range. During the course of the protest, Meridian presented information regarding its experience in maintaining the three systems at issue, and explained why it believed that the agency should not rely on the information furnished by its references; in effect, Meridian has had an opportunity to communicate with the agency on this point. Given this communication and the fact that we are otherwise recommending that the agency request and evaluate revised offers and make a new competitive range determination, we need not resolve the dispute regarding the references. We believe that the agency, in implementing our recommendation, should take into consideration the information presented by Meridian during the course of this protest regarding its experience in maintaining [deleted] under its reference contracts.